IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2355 OF 2004

IN

SUIT NO.2423 OF 2004

1. Gopana Krishna Kumar & others. ...Plaintiffs.

vs.

Pravin Dalapatram Desai ...Defendant

Mr.V.Y.Sanglikar i/b. Karim Vakil, for Plaintiffs.

Mr.A.Y.Sakhare i/b. Ms.Marlyn Montero, for Defendant.

CORAM: D.K.DESHMUKH,J.

DATED: 22nd March, 2007.

P.C.:-

1. This is a notice of motion taken out by the plaintiffs for an interim order in a suit filed under Section 6 of the Specific Relief Act. The relevant facts are that the defendant, admittedly, is the owner of the flat. The Bank of Baroda was a tenant in relation to the flat. The predecessor in title of the present plaintiffs was the employee of the Bank of Baroda. He was given possession of the flat by the Bank of Baroda. The defendant filed a suit for decree of eviction against his tenant i.e. Bank of Baroda. That suit was initially dismissed by the Trial

Court. One of the reasons for dismissal of the suit was that the predecessor in title of the present plaintiffs is not joined as party to the suit. That judgment was challenged before the Appeal Court. The Appeal Court decreed the suit. It is held that the predecessor in title of the present plaintiffs is not a necessary party to the suit between the landlord-defendant and their tenant- Bank of Baroda. In execution of the decree passed in that suit, the plaintiffs lost possession of the suit. They have instituted this suit under Section 6 of the Specific Reliefs Act. A suit under Section 6 of the Specific Reliefs Act can be instituted if the plaintiffs allege that they were deprived of possession of the immovable properties otherwise than in due course of law. When the plaintiffs have lost possession in execution of the decree of Small Causes Court, prima facie, it appears that they may not be able to say that they have lost possession not in due process of law. Secondly, if the plaintiffs have lost possession in execution of the decree, the question whether the decree was executable against the plaintiffs or not, is a question which will arise in execution proceedings. Therefore, in view of the provisions of Section 47 of the Civil Procedure Code, prima facie, it appears that the suit may not be maintainable. As the plaintiffs do not have prima facie case, they are not entitled to any interim relief. The notice of motion is disposed of. The ad-interim order which is presently operating is vacated.

2. At the request of the learned Counsel appearing for plaintiff, operation of the ad-interim order is continued for a period of four weeks.